

RECEIVED

MAR 28 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

March 28, 2000

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
445-12th Street Lobby  
Counter TW-A325  
Washington, D.C. 20554

Re: Docket No. MM 99-339

Ms. Salas:

On March 24, 2000, The Association of America's Public Television Stations submitted timely reply comments in the above captioned proceeding electronically, as the attached confirmation report demonstrates. The document was formatted as a Microsoft Word for PC document. However, on March 28, we received the attached e-mail message that our electronic filing was corrupt and unviewable. Deputy Secretary William Caton informed me via telephone today that we should file our reply comment via paper and ask that the Secretary's Office and the Commission accept this as timely filed.

Accordingly, we ask that, pursuant to 47 C.F.R. §§1.41 and 1.46, you waive the deadline for filing reply comments in this case to allow our document to become part of the public record. Attached is an original and nine copies of our reply comment in the above captioned proceeding. If you have any questions or concerns, please call me at 202-887-1700, extension 220.

Sincerely,



Andrew D. Cotlar  
Staff Attorney

No. of Copies rec'd  
List ABCDE

019



# Federal Communications Commission

**The FCC Acknowledges Receipt of Comments From ...  
Association of America's Public Television Stations  
...and Thank You for Your Comments**

Your Confirmation Number is: '2000324497763 ' 1		
Date Received: Mar 24 2000		
Docket: 99-339		
Number of Files Transmitted: 1		
<b>File Name</b>		
<b>File Type</b>		<b>File Size (bytes)</b>
REPLY TO COMMENTS		Microsoft Word 380033

[Initiate a Submission](#) | [Search ECFS](#) | [Return to ECFS Home Page](#)

[FCC Home Page](#)[Search](#)[Commissioners](#)[Bureaus/Offices](#)[Finding Info](#)

updated 03/25/98






Tuesday, March 28, 2000 7:43:29 AM

Message

From:  ECFSHelp@fcc.gov

Subject: Unreadable Comments

To:  Andrew Cotlar

Cc:  msalas@fcc.gov  
 prawling@fcc.gov  
 wcaton@fcc.gov

To Whom it May Concern:

On 3/24/00, your organization filed Reply Comments in docket 99-339 (2000324497763) ,that appear to be corrupt and unviewable. Please resend your documents. If you have any further questions, please call:(202) 418-0193.

Thank you

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	MM Docket No. 99-339
	)	
Implementation of	)	
Video Description of	)	FCC 99-353
Video Programming	)	
	)	

**REPLY COMMENTS OF THE ASSOCIATION OF AMERICA'S PUBLIC  
TELEVISION STATIONS**

The Association of America's Public Television Stations ("APTS") hereby submits its reply comments in the above captioned proceeding. APTS responds to the comments filed by the WGBH Educational Foundation Media Access Division ("Media Access Division") and the National Television Video Access Coalition ("Video Access Coalition"). These two parties oppose the Commission's proposal to exempt public television stations from the proposed video description requirements.

The Commission's exemption proposal is based on a two-part rationale. First, the Commission recognized that public television has been at the forefront in the development of video descriptive services and has been airing described video programming for more than a decade.<sup>1</sup> As the Commission noted, "Noncommercial stations provide video description in the absence of Commission rules requiring them to do so."<sup>2</sup> Secondly, the Commission recognized that many public television stations face financial challenges that

---

<sup>1</sup> Implementation of Video Description of Video Programming, Notice of Proposed Rulemaking, FCC 99-353, Docket No. 99-339 (Nov. 18, 1999), ¶2 ("NPRM").

<sup>2</sup> NPRM, ¶25, n. 65.

should be accommodated, due to their unique means of funding and their current financial burdens associated their transition to digital operations.<sup>3</sup> Accordingly, the Commission proposed not to impose regulations requiring noncommercial stations to provide video description at this time.<sup>4</sup>

The Media Access Division and Video Access Coalition oppose the Commission's proposed exemption for public television on two bases. First, they argue that, without regulations imposed, public television stations "would fall behind" in providing descriptive services<sup>5</sup> and that "funding vagaries and changes in focus of management" may cause public television's "excellent record to falter."<sup>6</sup> Secondly, they suggest that the imposition of description requirements on public television would not be an "undue burden" not withstanding its funding structure and digital transition costs. They assert that the costs of the transition will be "tax-payer financed" or met by "additional resources" within the government.<sup>8</sup> These two arguments rely upon faulty assumptions and misleading statements. APTS hereby offers its response to correct the record in this important proceeding.

---

<sup>3</sup> NPRM, ¶25.

<sup>4</sup> NPRM, ¶25.

<sup>5</sup> Comments of the Video Access Coalition at 6.

<sup>6</sup> Comments of the Media Access Division at 3.

<sup>7</sup> Comments of Video Access Coalition at 6.

<sup>8</sup> Comments of Media Access Division at 4.

## **The Commission's Proposed Exemption for Public Television is Justified**

### **A. Public Broadcasters' Current Record Supports The Exemption**

While the two commenters recognize that public television has been and continues to be the leader in developing and providing descriptive video services on a voluntary basis consistent with its mission, the commenters suggest that regulations must be imposed upon public stations to ensure that the stations will not abandon their commitment to making their programming accessible. The Media Access Division states that the "delivery of described programming from noncommercial broadcasters to consumers must be enshrined in the Commission's rules" and that public broadcasters "need guidance as to how their digital infrastructure should be designed and built in order to anticipate eventual requirements for carriage and delivery of described programming."<sup>9</sup> Without a rational explanation, the commenters make this illogical leap based upon an unsubstantiated fear that some undefined future events may negatively impact public television's voluntary commitment to provide video description.

Administrative regulations should never be imposed to address unfounded fears lacking in demonstrable evidence, particularly when present behavior refutes those fears. Public television has developed and provided video description because of its desire to fulfill its mission to deliver educational, informational and cultural programming and related services to the unserved and underserved of our nation.<sup>10</sup> Therefore, public broadcast stations' commitment to make their programming accessible to all audiences will not change. The imposition of requirements on public broadcasters in the absence of a present and real problem would be poor administrative practice on the part of

---

<sup>9</sup> Comments of the Media Access Division at 15.

<sup>10</sup> 47 U.S.C. 396 (a)(6) and 396 (a) (9).

the Commission. The Commission should refrain from imposing regulations on public broadcasters in the absence of an established record demonstrating a current or prospective need for the rules.

B. Public Broadcasting Stations' Unique Financial Burden Justifies The Exemption

The Commission is correct in proposing an exemption for public broadcasting from the proposed video description rules based upon its unique financial dependence on sources of funding very different from commercial video providers. This financial challenge has intensified as public television stations face the federally mandated conversion to digital operations by May 2003, at an estimated overall cost of \$1.7 billion.

The commenters rely upon erroneous facts in challenging the Commission's judgment that public broadcasters should be exempt due to financial hardship. The Media Access Division states that "the cost of many if not most noncommercial stations' transition to DTV will be taxpayer-financed" and that "(a)dditional resources exist to assist PBS member stations in their DTV transition . . . (b)oth the Department of Commerce's National Telecommunications and Information Administration and the Corporation for Public Broadcasting are helping to ease these burdens . . ."<sup>11</sup>

Both of these statements are fundamentally incorrect. Public television has realigned its goal for federal funding and is seeking only \$450 million from the federal government to assist in its transition. Therefore, stations have to raise the remaining \$1.3 billion in funding from state, local and private sources. To date, public television stations have raised only \$380 million in digital funding from

---

<sup>11</sup> Comments of the Media Access Division at 4.

non-federal sources.<sup>12</sup>

Further, Media Access Division's statement that CPB and NTIA will ease the financial burden of public television's digital conversion is unfounded. To date, no funds have been authorized to CPB for public broadcasting's digital conversion.<sup>13</sup> Through NTIA's existing Public Telecommunications Facilities Program (PTFP), public broadcasters have been awarded some grants for digital conversion. However, these grants have been minimal. Public broadcasters were awarded only \$12.5 million in PTFP grants for digital conversion and related projects in FY 1998, and only \$16.7 million in PTFP grants for digital use in FY 1999. The PTFP program covers a specific list of eligible transmission equipment that does not include any ear marked funding for descriptive or captioning conversion. Further, PTFP funding is in demand by many stations, and, except in very unusual circumstances, PTFP awards must be matched with non-federal funds. Therefore, in light of the overall cost of \$1.7 billion for public television's conversion to digital, the amount of funding available through PTFP has done, to date, very little to "ease the burdens" of the costs of digital conversion for public television.

In sum, it is quite appropriate for the Commission to base the exemption for public broadcasting upon financial hardship, coupled with an exemplary record in providing descriptive services. In fact, the Commission in the past has exempted public broadcasters because of their nonprofit funding structure. For

---

<sup>12</sup>These non-federal sources include: \$222 million in state support; \$109 million from individuals; \$26 million from foundations; \$9 million from corporations; and \$14 million from other non-federal sources. PBS Campaign Watch (March 1, 2000).

<sup>13</sup> The past two years, small sums were appropriated to CPB, but have not been made available. The \$15 million appropriated in 1999 reverted to the Treasury because it was not authorized by September 30, 1999. The \$10 million appropriated for 2000 is subject to authorization by September 30, 2000. To date there is no authorization provision in any legislation.

example, unlike commercial broadcasters, noncommercial educational television stations are exempt from paying annual regulatory fees.<sup>14</sup> In addition, they are also exempt from paying application filing fees.<sup>15</sup>

---

<sup>14</sup> See 47 C.F.R. §1.1162(e) and 47 U.S.C. §159(h)(1).

<sup>15</sup> 47 C.F.R. §1.1114(c) and 47 C.F.R. §1.1114(e)(1).

### Conclusion

Public television is proud of its leadership role in offering both closed captioning and video description service to the American public. APTS applauds the Commission's foresight in accommodating persons with visual disabilities, as well as its sensitivity to the financial difficulties many public television stations face. Consistent with its mission to make its services available to all of the nation's citizens, public television will continue to play a leadership role by making noncommercial educational programming available to our citizens with visual disabilities through video description. The Commission's proposed exemption for public television stations from the proposed description requirements based upon public broadcasting's existing voluntary provision of descriptive services and its unique funding structure is justified and appropriate.

Respectfully submitted,



---

Marilyn Mohrman-Gillis  
Vice President, Policy & Legal Affairs  
Lonna M. Thompson  
Director, Legal Affairs  
Andrew D. Cotlar  
Staff Attorney  
Association of America's Public Television Stations  
1350 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
202-887-1700

March 24, 2000